

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street
Sacramento, California 95814

Main website: www.energy.ca.gov



Notice of a Public Hearing on Regulations to Approve Certifiers and Technical Assistance Providers for the California Climate Action Registry

On February 16, 2005, the California Energy Commission adopted regulations to implement its responsibilities regarding the California Climate Action Registry (Registry). SB 527 (Sher), Chapter 769, Statutes of 2001 requires the Registry, created by SB 1771 (Sher), Chapter 1018, Statutes of 2000 to assist and enable participating entities to voluntarily record their annual greenhouse gas emissions in a consistent and certifiable format. SB 527 also requires the Energy Commission to assist the Registry by qualifying third-party organizations to certify emission baselines and inventories (Certifiers) and to provide technical assistance (TAs).

The adopted regulations were submitted to the Office of Administrative Law (OAL) as required by the California Administrative Procedure Act. The OAL disapproved the regulations. In order to respond to the problems identified by OAL, the Energy Commission will conduct a public hearing on:

THURSDAY, JULY 7, 2005

1:30 p.m.

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

First Floor, Hearing Room B

Sacramento, California

(Wheelchair Accessible)

The hearing will consider the justification for various items in the adopted regulations, as discussed in the attached "Expert Opinion of Jeff Wilson." This hearing will also constitute the rescheduling, pursuant to Government Code section 11346.8, of the hearing that was scheduled for June 2, 2004, in the original rulemaking proceeding. Following the hearing, the Energy Commission intends to resubmit the regulations, as originally adopted, to OAL, unless comments received justify a change.

The adopted regulations and other supporting documents are available on the Energy Commission website at www.energy.ca.gov/global_climate_change/registry/. Individuals who do not have access to the internet may request copies of the proposed regulations by calling Jeff Wilson, Project Manager, at (916) 657-4774, by e-mail at jewilson@energy.state.ca.us, or by regular mail at:

California Energy Commission
Attn: Jeff Wilson
1516 Ninth Street, MS 41
Sacramento, California 95814-5512

Any comments on the hearing or any other aspect of the regulations must be received by the Energy Commission no later than **5:00 pm July 7, 2005**. Please send written comments to:

Docket Unit
California Energy Commission
Docket No. 03-QCTA-1
1516 Ninth Street, MS 4
Sacramento, California 95814-5512

Or, parties may submit comments by e-mail to DOCKET@energy.state.ca.us or by fax (916) 654-4354.

Questions regarding this notice should be directed to Jeff Wilson, Climate Change Project Manager, at (916) 657-4774 or jewilson@energy.state.ca.us. If you need assistance in participating in this workshop or in the regulatory process, call Margaret Kim, Public Adviser at (916) 654-4489, toll free in California at (800) 822-6228 or e-mail at pao@energy.state.ca.us. If you require special accommodation at the workshop, please call Lou Quiroz at (916) 654-5146 at least five days before the workshop. News media inquiries should be directed to Assistant Executive Director, Claudia Chandler at (916) 654-4989.

Note: California Energy Commission's formal name is State Energy Resources Conservation and Development Commission.

IN RESPONSE TO THE OFFICE OF ADMINISTRATIVE LAW THE CALIFORNIA ENERGY COMMISSION PROVIDES THE QUALIFICATIONS AND EXPERT OPINION OF JEFF WILSON

Jeff Wilson has extensive experience in matters concerning evaluating air emissions inventories and air pollution, including greenhouse gas emissions. He has a B.S. in Mathematics and a B.S. in Chemistry, with over 20 years of relevant experience at the California Energy Commission, California Air Resources Board, and other positions in private industry. He is currently a Project Manager in the Climate Change Program at the California Energy Commission and has spent several years working with the California Climate Registry and others in determining the necessary minimum qualifications that Certifiers and Technical Assistance Providers should possess in order to adequately certify emissions or otherwise provide assistance in such matters.

Basis for the decision to require two years' experience for the technical assistance providers and certifiers, both general and specific, in Sections 2811, 2821, and 2822.

Two years' greenhouse gas (GHG) or other air emissions-related experience is the minimum amount of experience needed to gain competence in the various areas identified. Evaluating GHG emissions inventories is a relatively new field, not many firms have direct experience, but may have all of the necessary skills required to certify a GHG inventory. Therefore, the regulations permit firms that have experience in evaluating other air emissions-related experience to satisfy the experience required. We considered requiring a greater or lesser amount of experience, but concluded that three years was too constraining, and would eliminate otherwise qualified individuals, and one year of experience was too lax and would potentially jeopardize the quality of services provided to the Registry members, if adopted. Over a two year period a company could perform several emissions evaluation tests, analyze results under varying physical environment and climatic conditions, and gain confidence from feedback comments and scrutiny of the results. Therefore, two years' GHG or other air emissions-related experience was deemed to be the most appropriate.

Basis for decision to require insurance in the amount of one million dollars in Section 2820. The proposed regulations set one million dollars as the appropriate amount of insurance to be carried by Registry certifiers. One million dollars of insurance is considered adequate to cover any potential liability but not too much to be burdensome on companies contracting with the Registry members. The specific terms of a contract a certifier may have with a Registry member will be determined by the certifier and Registry member while negotiating for certification services. These terms may include liability for the value of potential greenhouse gas emissions credits; this value will vary from company to company but for some companies could be on the order of one million dollars in future market conditions. Therefore, insurance in the amount of one million dollars is the most appropriate amount of insurance to require an applicant to have.

Basis for decision in Section 2831 to require a minimum score of 80 percent in satisfaction of the criteria in Appendix B. A score of 80 percent in Appendix B represents a minimum amount of proficiency in the subject matter that would still ensure competency to perform the necessary work. Requiring a score of more than 80 percent would be too constraining and would risk eliminating qualified applicants. Requiring a score of less than 80 percent would be too lax and would risk qualifying applicants who could not competently perform the necessary duties. The 80 percent threshold is also consistent with state government bidding requirements for relatively new contract functions. Therefore, a minimum score of 80 percent is the most appropriate minimum score to qualify certifiers.

Basis for decision to allot the specific points for each criteria in Appendix B. The number of points selected for the enumerated categories is the most appropriate number of points. For the evaluation criteria for certifiers, experience in the various categories has a maximum value of 10 points per category, whereas knowledge in the various categories have a maximum value of 2 points. This reflects the greater importance placed on demonstrated experience over knowledge in qualifying certifiers; experience weighs more heavily because it is a better indication of an applicant's ability to competently perform the necessary work.

APPROVAL OF TECHNICAL ASSISTANCE PROVIDERS AND CERTIFIERS FOR THE CALIFORNIA CLIMATE ACTION REGISTRY

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Article 1. General Provisions

2800. Purpose of Regulations

This chapter specifies the criteria and procedures to be followed by the State Energy Resources Conservation and Development Commission in administering the Qualification Program for Certifiers and Technical Assistance Providers under Section 42870 of the Health and Safety Code.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2801. Definitions

In this chapter, unless otherwise indicated, the definitions found in Health and Safety Code section 42801.1 and the following definitions apply:

(a) “Applicant” means a person submitting an application in response to an RFA.

(b) “Applicant Team” means an applicant and all of the applicant’s partners designated in one application.

(c) “Certifier” means a person approved by the State as qualified under these regulations to certify the emissions results of Registry Participants.

(d) “Certification Services” means any services performed in the course of determining whether a Registry Participant’s greenhouse gas emissions inventory has met a minimum quality standard and complied with registry-approved procedures and protocols for submitting emissions inventory information.

(e) “Commission” means the California State Energy Resources Conservation and Development Commission.

(f) “Firm” means any individual, association, partnership, trust, corporation, company, or other organization.

(g) “General Certifier” means a certifier who certifies greenhouse gas emissions pursuant to the Registry’s General Reporting Protocol.

(h) “Industry-Specific Certifier” means a certifier who certifies greenhouse gas emissions pursuant to any of the Registry’s Industry-Specific Reporting Protocols.

(i) “Partner” means a person designated as such in an application for qualification as a Certifier or a person with whom the applicant shares staff or financial capability for the purposes of the application.

(j) “Registry” means the California Climate Action Registry.

(k) “Registry Participant” means a participant in the California Climate Action Registry.

(l) “Registry Service Provider” means a Certifier or Technical Assistance Provider.

(m) “Related Entity” means an organization that is related by ownership to a firm, including, but not limited to, a parent company, a holding company, a subsidiary, and a subsidiary of a parent company.

(n) “RFA” means a Request for Applications.

(o) “Technical Assistance Provider” means a firm approved by the State as qualified under this section to provide technical assistance and advice to Registry Participants.

(p) “Work Product” means any product produced for a client under contract.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

Article 2. Applications for Technical Assistance Providers

2810 Information Requirements for Applications for Technical Assistance Providers

(a) Any firm that provides technical assistance or advice to Registry Participants pursuant to Health and Safety Code section 42800 et seq. may be approved by the State. An application for approval shall contain the following:

(1) A cover page listing the applicant’s name and address, contact person, contact e-mail, and contact telephone number.

(2) A one-page description of at least two work products delivered under contract to a client that demonstrate the applicant’s mastery of one or more of the following topics:

- (A) utilizing engineering principles;
- (B) estimating greenhouse gas emissions;
- (C) developing and evaluating air emissions inventories;
- (D) auditing and accounting principles;
- (E) auditing environmental responsibility; or
- (F) developing greenhouse gas-related software.

(b) Applications shall not contain any confidential information.

(c) All applications, consisting of one original and three copies, shall be delivered in person, by a messenger service, or through the U.S Mail to the California Energy Commission, Climate Change Program, 1516 Ninth Street, Sacramento, CA, 95814 by the deadline identified in the request for applications. Electronic mail or facsimile transmissions will not be accepted. Unless otherwise stated, all submittals and correspondence relating to Technical Assistance Providers shall also be directed to this address.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2811. Minimum Requirements for Technical Assistance Providers

An applicant shall have at least two years of greenhouse gas or other air emissions-related experience in one or more of the following topics:

- (a) utilizing engineering principles;
- (b) estimating greenhouse gas emissions;
- (c) developing and evaluating air emissions inventories;

- (d) auditing and accounting principles;
- (e) auditing environmental responsibility; or
- (f) developing greenhouse gas-related software.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

Article 3. Applications for General and Industry-Specific Certifiers

2820. Information Requirements for Applications for General and Industry-Specific Certifiers

(a) Any firm that certifies a Registry Participant's greenhouse gas emissions inventory pursuant to Health and Safety Code 42800 et seq. must be approved by the State. An application for approval shall contain the following:

(1) A copy of an insurance policy showing that the applicant has a minimum of one million U.S. dollars of professional liability insurance. If the insurance is in the name of a related entity, the applicant shall also describe the financial relationship between the applicant and the related entity and provide documentation supporting the description.

(2) A one-page description of at least three work products produced within the previous five years. These work products shall have been produced, in part or in whole, by the applicant and shall consist of final reports or other materials provided to clients under contract in previous work. For work products that were jointly produced by the applicant and another entity, the role of the applicant in the work product shall be clearly explained. The work products must demonstrate the applicant's ability to organize and manage a team of technical experts to effectively complete complex work tasks in a timely manner and demonstrate experience in multiple industry sectors for General Certifier applicants, and the relevant industry sector for Industry-Specific Certifier applicants, in each of the following topics:

- (A) utilizing engineering principles;
- (B) estimating greenhouse gas emissions;
- (C) developing and evaluating air emissions inventories; and
- (D) auditing and accounting principles.

(3) A cover page listing the applicant's name and address, contact person, contact e-mail, and contact telephone number.

(b) Applications shall not contain any confidential information.

(c) All applications, consisting of one original and six copies, shall be delivered in person, by a messenger service, or through the U.S. Mail to the California Energy Commission, Climate Change Program, 1516 Ninth Street, Sacramento, CA, 95814 by the deadline identified in the request for applications. Electronic mail or facsimile transmissions will not be accepted. Unless otherwise stated, all submittals and correspondence relating to qualifying Certifiers shall also be directed to this address.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2821. Minimum Requirements for General Certifiers

Any firm who certifies a Registry Participant that falls under the Registry's General Reporting Protocol shall meet the following criteria:

(a) Each applicant shall demonstrate knowledge in each of the following topics:

- (1) utilizing engineering principles;
- (2) estimating greenhouse gas emissions;
- (3) developing and evaluating air emissions inventories;
- (4) auditing and accounting principles;
- (5) the purpose of the Registry and Registry Protocols; and
- (6) knowledge of information management systems.

(b) Each applicant shall have at least two years' experience in certification or verification of greenhouse gas or conducting air emissions inventories.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2822. Minimum Requirements for Industry-Specific Certifiers

Any applicant for approval to certify an industry-specific Registry Participant shall meet the following criteria:

(a) Each applicant shall meet all of the requirements in section 2821.

(b) Each applicant, or applicant team, shall employ staff with professional licenses, knowledge, and experience appropriate to the specific industry that it seeks to certify.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2823. Partnering

(a) Additional firms may be used by the applicant to meet any of the criteria identified in Sections 2821 or 2822. These additional firms shall be designated as partners to the applicant.

(b) Each partner shall submit a one-page description of at least one work product. The work product shall have been produced, in part or whole, by the partner and shall consist of a final report or other material provided to clients under contract in previous work. For a work product that was jointly produced by the partner and another entity, the role of the partner in the work product shall be clearly explained. The work product will be taken into consideration when evaluating the sum of experience provided by the applicant team.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

Article 4. Procedures for Considering Applications for Technical Assistance Providers, General Certifiers, and Industry-Specific Certifiers

2830. Issuance of Request for Applications

When issuing a Request for Applications, the Commission shall set a deadline for the submission of applications no less than 30 calendar days after the RFA is issued. All applications must be submitted in response to an RFA and must be submitted by the deadline identified in the RFA.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2831. Review of Applications

(a) The Commission shall review each application to determine its completeness and compliance with the format requirements. The Commission shall then organize an Evaluation Committee to review and score all applications that are complete and comply with the required format.

(b) The Evaluation Committee shall consist of at least three members with at least one member from the Commission and one member from the Registry. Other members may be from other State agencies that have expertise in certification subject areas, as needed.

(c) In order to qualify, each applicant must achieve a passing score for each pass/fail criteria and must achieve a cumulative score of at least 80 percent for the criteria that are quantitatively scored. The evaluation criteria for applications for Certifiers and Technical Assistance Providers are contained in Appendix A and Appendix B, respectively.

(d) Applications meeting the minimum evaluation criteria shall automatically be approved for recommendation to the Registry's Service Provider approval process. For applications that do not meet the minimum required score the Evaluation Committee may conduct interviews with applicants to clarify the applicant's qualifications. Upon completion of the interviews, the Evaluation Committee may make adjustments to the scores and approve or deny the applications accordingly.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2832. Grounds for Rejection of an Application

(a) An application may be rejected for any of the following reasons:

- (1) it is incomplete or is received after the deadline established for receipt of the application;
- (2) it contains false or intentionally misleading statements or references which do not support an attribute or condition contended by the applicant;
- (3) it is not prepared using the appropriate forms;
- (4) it is unsigned; or

(5) it contains any confidential information.

(b) The Commission may waive any immaterial defect or deviation contained in an application. The Commission's waiver shall in no way modify the application requirements or excuse the applicant from substantial compliance.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2833. Modifying an Application

An applicant may, by letter to the Commission's Contact Person, modify a submitted application prior to the application submission deadline.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2834. Notification of the Results of the Evaluation

The Commission shall notify applicants of the results of the evaluation of their applications by mail no later than 30 working days after the deadline for submission. The Commission shall recommend to the Registry for its Service Provider approval process those applicants that pass the Commission's evaluation process.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2835. Appeal of Determination

If an application receives a failing score in the evaluation process, an applicant may dispute the evaluation by first filing an appeal with the Evaluation Committee within 30 days of receiving the results of the evaluation. The appeal shall consist of written statements explaining how the application meets the criteria and minimum score required. The Evaluation Committee shall grant or deny the appeal within 10 working days. If the applicant is not satisfied with the Evaluation Committee's response, the applicant may file a subsequent appeal with the Commission's Transportation Committee within 10 days of the Evaluation Committee's determination. The Transportation Committee shall consult with the Registry President and issue a decision on the appeal within 30 working days of receipt of the appeal.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2836. Document Disposition

(a) On the submission date, all applications and related material submitted in response to an RFA become the property of the State and public record.

(b) At the conclusion of the evaluation, the original application will be retained in its entirety for at least three years.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

Article 5. Post-Qualification Changes and Submittal Requirements

2840. Renewal of Approval

Approval to act as a Registry Service Provider shall expire three years from the date of the notice of approval issued pursuant to section 2834, after which time the Registry Service Provider must re-apply pursuant to Section 2810 or 2820, as appropriate, to maintain approval.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2841. Rescission of Approval

The Commission, in consultation with the Registry, may rescind the approval of a Registry Service Provider for any of the following reasons:

- (a) the Registry Service Provider is no longer qualified due to changes in staffing or other criteria;
- (b) the Certifier has not complied with the Registry's certification and certifier policies; or
- (c) the Registry Service Provider is guilty of:
 - (1) gross negligence;
 - (2) inexcusable neglect of duty;
 - (3) intentional misrepresentation of data or other intentional fraud; or
 - (4) a felony or misdemeanor involving certification services or moral turpitude.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.

2842. Commission Visits to Registry Participants' Sites

(a) Prior to any site visit the Commission shall inform the Certifier and Registry Participant in writing of the Commission's intent to make a site visit. At the Commission's request, the Registry Participant shall provide to the Commission prior to a site visit any information provided to the Certifier for the purposes of certification.

(b) During the site visit, the Registry Participant shall provide the Commission or the Commission's contractor with documentation sufficient to ascertain whether the Registry Participant has a program consistent with Registry protocols and the reasonableness of the emissions information being reported for a sample of estimates or calculations. This documentation may include the following:

- (1) facility, emission source, stationary source, mobile source, and fuel inventories;
- (2) organization chart, greenhouse gas management plan, documentation and retention plan;
- (3) training manual, procedures manual, consultant qualifications statement;

- _____ (4) any protocols used in addition to Registry protocols;
- _____ (5) monthly electric utility bills, and emission factors of electricity use, if not a default factor;
- _____ (6) fuel purchase records, fuel in stock, vehicle miles traveled, inventory of vehicles, and emission factors of mobile combustion, if not a default factor;
- _____ (7) monthly utility bills from stationary combustion, fuel purchase records, inventory of stationary combustion facilities, and emission factors of stationary combustion , if not a default factor;
- _____ (8) monthly utility bills, fuel and efficiency data from supplier, and emission factors, if not a default factor, for each of the following:
 - _____ (A) cogeneration;
 - _____ (B) imported steam;
 - _____ (C) district heating;
 - _____ (D) district cooling; and
 - _____ (E) process activities;
- _____ (9) refrigerant purchase records, refrigerant sales records, calculation methodology, and emission factors;
- _____ (10) waste-in-place data, waste landfilled, calculation methodology, and emission factors;
- _____ (11) coal production data submitted to the Energy Information Administration, calculation methodology, and emission factors;
- _____ (12) gas throughput data, calculation methodology, and emission factors; and
- _____ (13) sulfur hexafluoride purchase records, calculation methodology, and emission factors.

_____ (c) If, as a result of a site visit, the Commission determines that a Registry Participant does not have a program for reporting greenhouse gases consistent with Registry protocols or that the Participant's reported data is not reasonable, then the Commission shall recommend to the Registry to not certify the Participant's data.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code; Section 42870, Health and Safety Code. Reference: Section 42870, Health and Safety Code.